

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 CATHERINE E. SANTILLAN
Senior Legal Analyst
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480

7 Legal Representatives for Complainant

8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

12 CHARLES BENAJO
13 Box 111 D Cohasset Stage Road
14 Chico CA 95973

15 Respiratory Care Practitioner License no. 23106
16 Respondent.

Case No. R-1985

**FIRST AMENDED
ACCUSATION
AND
PETITION TO REVOKE
PROBATION**

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation
20 solely in her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about December 3, 2003, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 23106 to Charles Benajan (Respondent). The
24 Respiratory Care Practitioner License was in full force and effect at all times relevant herein and
25 will expire on August 31, 2006, unless renewed.

26 PRIOR DISCIPLINE

27 3. The Board filed Statement of Issues no. S-322 based on Respondent's three
28 convictions: in May 14, 1994, he was convicted on his plea of nolo contendere to a violation of

1 Fish and Game Code section 2006, possession of loaded firearm in vehicle, and Health & Safety
2 Code section 11357(b), possession of less than one ounce of marijuana. On October 13, 1994,
3 respondent was convicted by plea of nolo contendere of violating Health & Safety Code section
4 11358, marijuana cultivation, a felony. The third conviction occurred on March 28, 1995.
5 Respondent was convicted by plea of nolo contendere of violating Vehicle Code section
6 23103/23103.5, alcohol related reckless driving. On September 18, 2003, a hearing was held
7 before Administrative Law Judge Jaime Roman. On November 20, 2003, the Board adopted the
8 Proposed Decision effective November 27, 2003 and Respondent's Respiratory Care Practitioner
9 License was revoked. However, the revocation was stayed and Respondent's license was placed
10 on probation for a period of five (5) years with certain terms and conditions. A copy of the
11 decision in case no. S-322 is attached as **Exhibit A** and is incorporated by reference.

12 JURISDICTION

13 4. This Accusation and Petition to Revoke Probation is brought before the
14 Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the
15 following laws. All section references are to the Business and Professions Code unless otherwise
16 indicated.

17 5. Section 3710 of the Code states: "The Respiratory Care Board of
18 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
19 the Respiratory Care Practice Act]."

20 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
21 revoke licenses to practice respiratory care as provided in this chapter."

22 7. Section 3750 of the Code states:

23 "The Board may order the suspension or revocation of, or the imposition of
24 probationary conditions upon, a license issued under this chapter, for any of the following causes:

25 "(d) Conviction of a crime that substantially relates to the qualifications, functions, or
26 duties of a respiratory care practitioner. The record of conviction or a certified copy thereof
27 shall be conclusive evidence of the conviction.

28 ///

1 “(g) Conviction of a violation of any of the provisions of this chapter or of any
2 provision of Division 2 (commencing with Section 500), or violating, or attempting to violate,
3 directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any
4 provision or term of this chapter or of any provision of Division 2 (commencing with Section
5 500).”

6 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
7 substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

8 8. Section 3752 of the Code states:

9 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to
10 a charge of any offense which substantially relates to the qualifications, functions, or duties of a
11 respiratory care practitioner is deemed to be a conviction within the meaning of this article. The
12 board shall order the license suspended or revoked, or may decline to issue a license, when the
13 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
14 an order granting probation is made suspending the imposition of sentence, irrespective of a
15 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his
16 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
17 dismissing the accusation, information, or indictment.”

18 9. California Code of Regulations, title 16, section 1399.370, states:

19 “For the purposes of denial, suspension, or revocation of a license, a crime or act
20 shall be considered to be substantially related to the qualifications, functions or duties of a
21 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
22 perform the functions authorized by his or her license or in a manner inconsistent with the
23 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
24 those involving the following:

25 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
26 the violation of or conspiring to violate any provision or term of the Act.

27 ///

28 “(c) Conviction of a crime involving driving under the influence or reckless driving

1 while under the influence."

2 COST RECOVERY

3 10. Section 3753.5, subdivision (a) of the Code states:

4 "In any order issued in resolution of a disciplinary proceeding before the board, the
5 board or the administrative law judge may direct any practitioner or applicant found to have committed
6 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
7 prosecution of the case."

8 11. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
10 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
11 and service fees."

12 12. Section 3753.1 of the Code states:

13 "(a) An administrative disciplinary decision imposing terms of probation may include,
14 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
15 monitoring the probation. "

16 FIRST CAUSE FOR DISCIPLINE AND TO REVOKE PROBATION

17 (Substantially related conviction)

18 13. Respondent is subject to disciplinary action under sections 3750(d),
19 3750(g), 3752 [conviction], and CCR 1399.370(a) and (c) in that he was convicted of a violation
20 of Vehicle Code section 23103/23103.5, reckless driving alcohol related, a misdemeanor. The
21 circumstances are as follows:

22 A. On August 11, 2004, California Highway Patrol Officer M. Fitzpatrick
23 observed a white Ford Explorer driving at a high rate of speed northbound on Esplanade north of
24 Nord Highway in the vicinity of the Sacramento River. He activated his radar unit and the unit
25 indicated a speed of 55 miles per hour. Officer Fitzpatrick followed the Ford and observed that the
26 driver was weaving, and following other vehicles too closely. Officer Fitzpatrick stopped the
27 vehicle, and the driver was identified as respondent by his California driver's license. As Officer
28 Fitzpatrick approached the driver's window, he observed respondent puffing rapidly on a lit

1 cigarette, and respondent's eyes appeared bloodshot and glassy. Officer Fitzpatrick asked
2 respondent if he had been drinking alcohol, and respondent replied "a little." Respondent later
3 admitted that he drank a half bottle of wine at The Albatross restaurant. Officer Fitzpatrick
4 smelled alcohol on respondent's person, and respondent's speech was slow, thick and slurred as he
5 spoke. He asked respondent to perform field sobriety tests. Respondent was not able to
6 satisfactorily perform the tests. Given respondent's physical signs of intoxication, his erratic
7 driving, and his poor performance on the tests, Officer Fitzpatrick arrested respondent for a
8 violation of Vehicle Code section 23152(a), driving under the influence of alcohol. Respondent
9 refused to take a preliminary alcohol screening test. He was transported to Butte County Jail
10 where he refused to submit to any blood alcohol chemical testing. Officer Fitzpatrick issued a
11 Notice to Appear to respondent for a misdemeanor violation of Vehicle Code section 23152(a),
12 driving under the influence of alcohol.

13 B. On September 8, 2004, a criminal complaint titled *People of the State of*
14 *California vs. Charles Louis Benajan*, case no. SCR46358 was filed in Superior Court, Butte
15 County. On or about February 15, 2005, the Court granted the District Attorney's motion to
16 amend the Complaint to add Count 2, a violation of Vehicle Code sections 23103/23103.5,
17 reckless driving alcohol related, a misdemeanor. Respondent entered a plea of no contest to count
18 2, and the Court dismissed Count 1. The Court found respondent guilty and determined that there
19 was a factual basis for the plea/conviction. Imposition of sentence was suspended and respondent
20 was placed on summary probation for twenty four months. Standard probation terms included:
21 obey all laws and report to Court in person or in writing as directed; follow all orders of Court and
22 report as directed; notify Court immediately of any change of residence address. Special
23 Conditions included: enroll in, pay for and successfully complete a DUI Level 1 class, and pay
24 fines of \$1,195.00.

25 14. Therefore, the probation ordered in case no. S-322 should be revoked
26 because respondent is in violation of code sections 3750(d), 3750(g), 3752 [conviction], and CCR
27 1399.370(c) in that he was convicted of a violation of Vehicle Code section 23103/23103.5,
28 reckless driving alcohol related, a misdemeanor; and respondent is in violation of Probation

1 Conditions One, obey all laws and Fifteen, abstain from mood altering substances.

2 SECOND CAUSE FOR DISCIPLINE AND TO REVOKE PROBATION

3 (Dishonesty; Abstain from mood altering substances)

4 15. At all times after the effective date of Respondent's probation, Condition 15
5 stated:

6 "Respondent shall completely abstain from the possession or use of any and all
7 mood altering drugs, substances and their associated paraphernalia, except when
8 the drugs are lawfully prescribed by a licensed practitioner as part of a documented
9 medical treatment."

10 16. On February 4, 2004, respondent completed a Drug Questionnaire form.
11 He answered "no" to the question, "Have you used or ingested any prescribed medication,
12 narcotic, or drug?" He answered "yes" to the question: "In the last 3 months, have you consumed
13 alcohol?," in the section "type of drug and/or alcohol," he wrote "beer." In the section "dates
14 used," he wrote "prior 12-3" and in "amount per day," he wrote "0-2." Respondent then signed
15 and dated the form under penalty of perjury.

16 17. On February 5, 2004, respondent informed Kevin Masuda, his probation
17 monitor, that respondent had consumed a "couple of beers" on the evening of February 3, 2004
18 and that he had taken a friend's Vicodin, a controlled substance, a few weeks earlier. Respondent
19 admitted that he did not list these violations on the Drug Questionnaire form.

20 18. Respondent was informed that the Board had contracted with Compass
21 Vision Inc. (CVI) to perform random testing, collection and analysis of biological fluids. On June
22 10, 2005, respondent provided a urine sample to CVI for testing. EtG is a biological marker for
23 alcohol, and can be detected in urine for up to five days after alcohol use. Respondent's sample
24 was positive for EtG in the amount of 25,000 nanograms per milliliter.

25 19. Therefore, respondent is in violation of code section 3750(j) [dishonest act],
26 in that he stated that he did not use prescription medication when in fact he had. He is also in
27 violation of probation condition 15 in that he used Vicodin, a controlled substance which was not
28 medically prescribed to him, and drank alcohol.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

5

6

7

8

2

9

1 23. Respondent's probation is subject to revocation because he failed to comply
2 with Probation Condition 3, referenced above. The facts and circumstances regarding this
3 violation are as follows:

4 A. Respondent was informed that the Board had contracted with
5 Compass Vision Inc. (CVI) to perform random testing, collection and analysis of biological fluids.
6 Respondent was informed that he was responsible to telephone an automated, toll free number on
7 a daily basis to determine if he was required to report to a collection site to be randomly tested.
8 The date and time of all calls made to the system are logged into CVI's database.

9 B. Respondent is in violation of this condition because he failed to
10 telephone CVI on the following dates in 2004: June 26; July 18, 24-25; August 1, 30-31;
11 September 22; October 20, 22, 25, 30; November 3-4, 19, 23; December 1-3, 5, 7, 9-10, 30.
12 Respondent has failed to telephone CVI on the following dates in 2005: January 2, 23, 26;
13 February 3, 25; March 11, 18, 24; April 7, 14; May 1, 4; June 5, July 7.

14 C. On December 28, 2004, the CVI telephone log identified that
15 respondent called at 9:13 a.m. and was directed to provide a specimen. He failed to provide a
16 specimen on that date, but he provided a specimen on December 29, 2004. On February 3, 2005,
17 respondent failed to call CVI and he was selected to provide a specimen on that date.

18 FIFTH CAUSE TO REVOKE PROBATION

19 (Probation Monitoring Costs)

20 24. At all times after the effective date of Respondent's probation, Condition 4
21 stated:

22 "All costs incurred for probation monitoring during the entire probation shall be
23 paid by respondent... All payments for costs are to be sent directly to the Board and
24 must be received by the date(s) specified."

25 25. As of the date of this petition, respondent is in arrears \$2,100.00 for
26 payment due to the Board for the months of February 2004 through October 2005.

27 ///

SIXTH CAUSE TO REVOKE PROBATION

(Cost Recovery)

26. At all times after the effective date of Respondent's probation, Condition 8 stated:

"Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,344 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision..."

27. The decision was effective on November 27, 2003. Respondent's final payment was due on November 27, 2004. Respondent has failed to pay \$296.00 in cost recovery. Therefore, he is in violation of Condition 8.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. S-322 and imposing the disciplinary order that was stayed thereby revoking Respiratory Care Practitioner License No. 23106 issued to Charles Benajan;

2. Revoking or suspending Respiratory Care Practitioner License No. 23106,
issued to Charles Benajan;

3. Ordering Charles Benajan to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Taking such other and further action as deemed necessary and proper.

DATED: October 31, 2005

Original signed by Liane Zimmerman for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Respiratory Care Board of California Case No. S-322